B.C.D. 02-93

DEC 3 1 2002

EMPLOYER STATUS DETERMINATION
West Texas and Lubbock Railway Company, Inc.
West Texas and Lubbock Railroad Company, Inc. (B.A. No. 2871)

This is a determination of the Railroad Retirement Board concerning the status of the West Texas and Lubbock Railway Company, Inc. (WT&LR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA) and the continuing status of West Texas and Lubbock Railroad Company, Inc. (B.A. No. 2871) ("Railroad").

In Surface Transportation Board (STB) Finance Docket No. 34205 decided June 7, 2002, WT&LR filed a notice of exemption to lease from and operate over, a 107 mile segment of track. The rail line extends between milepost 06.3 on the outskirts of Lubbock and the end of the line at MP 63.8 at Seagraves and between MP 3.2 at Lubbock and MP 38.9 at Whiteface, all located in the state of Texas. Railroad is assigning approximately 5 miles of trackage rights (for interchange purposes only) that Railroad holds over the Burlington Northern and Santa Fe Railway between BNSF MP 83.6 at Broadview and BNSF MP 88.6 at Canyon Junction in the vicinity of Lubbock, Texas. In addition, the WT&LR is leasing two locomotives from Railroad. According to the lease agreement, the term of the lease is 5 years, with an option for WT&LR to renew the lease for an additional 5 years. WT&LR pays rent quarterly and would have to pay interest on the rent due if the rent were paid more than 30 days after it is due.

Ms. Stanlee Weller, Manager of Accounting of the WT&LR's parent company, Iowa Pacific Holding, provided information regarding WT&LR. According to that information, WT&LR hired the four employees of Railroad, who first performed compensated service for WT&LR on May 25, 2002.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

West Texas and Lubbock Railway Company, Inc.
West Texas and Lubbock Railroad Company, Inc. (B.A. No. 2871)

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The evidence of record establishes that WT&LR is a rail carrier operating in interstate commerce. Accordingly, it is determined that WT&LR became an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act and the corresponding provision of the Railroad Unemployment Insurance Act effective May 25, 2002, the date as of which its employees were first compensated. [CF. Rev. Rul. 82-100, 1982-1 C.B. 155, wherein the IRS held that a company became an employer under the Railroad Retirement Tax Act on the date it hired employees to perform functions directly related to its carrier operations.]

There remains the question as to whether the coverage of Railroad should be terminated since it has leased its trackage and assets to WT&LR. The Board Coverage Decision in Railroad Ventures, Inc. (B.C.D. 00-47, November 7, 2000) refined the standard that the Board would use to determine when an entity that has its railroad functions performed by another would be found to be an employer under the Acts. In Railroad Ventures, the Board set forth a three-part test that it would use to determine the employer status of such an entity. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the RRA and RUIA unless the Board finds that all three of the following factors exist:

1) the entity does not have as a primary business purpose to profit from railroad activities;

2) the entity does not operate or retain the capacity to operate the rail line;

3) the operator of the rail line is already covered or would be found to be covered under the RRA and RUIA. B.C.D 00-47, at pages 4-5.

West Texas and Lubbock Railway Company, Inc.
West Texas and Lubbock Railroad Company, Inc. (B.A. No. 2871)

West Texas and Lubbock Railroad Company is a subsidiary of RailAmerica, Inc. Information in the Board's coverage file indicates that RailAmerica, Inc. is the world's largest short line and regional railroad operator, owning or holding equity interests in 50 short line and regional railroads operating in the United States, Canada, Australia, and the Republic of Chile. Applying the above test to the situation in this case, Railroad remains affiliated with other for profit carriers of RailAmerica, Inc. Therefore, its primary business purpose is still to profit from railroad activity. Consequently, under the test enunciated above, Railroad remains an employer under the Acts administered by the Board.

Original signed by:

Cherryl T. Thomas

V. M. Speakman, Jr.

Jerome F. Kever